

18 August 1975

**DD/A Registry**

**File** Security-4-1

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Implementation of the Privacy Act of 1974

1. This memorandum contains for your approval, in paragraph 9, recommendations to implement the Privacy Act of 1974.

2. The Privacy Act imposes restrictions on Federal agencies in the collection, maintenance, use and dissemination of personal information about U.S. citizens and aliens lawfully admitted for permanent residence. Certain provisions of the Act are mandatory for CIA and all other agencies. Briefly, these provisions provide for:

a. Specified limitations on the disclosure of personal information.

b. A required accounting of all disclosures of personal information made outside the Agency (minus Freedom of Information Act (FOIA) disclosures).

c. Publication in the Federal Register of the name, subject, description, routine use, and records management policy for Agency systems of records subject to the Act.

d. A requirement to establish rules for the conduct of records management personnel and to assure confidentiality of records.

e. Criminal penalties (fine of up to \$5,000) for employees who willfully disclose personal information to an individual not entitled to receive it.

In addition, the Act creates a Privacy Protection Study Commission which will be authorized to review the Agency's records management practices and compliance with the Act.

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3. The Act also provides an exemption in subsection 3(j) which authorizes you, as head of the Central Intelligence Agency, to exempt any system of Agency records from all but the above mandatory provisions. However, the events of recent months and your testimony before the Government Information and Individual Rights Subcommittee of the House of Representatives would seem to weigh against the full exercise of CIA's exemption. Thus, the discussion and recommendations contained herein are based on your previous public statements outlining the need to protect certain Agency interests, your statutory responsibility to protect intelligence sources and methods, and the consensus of the Deputy Directors regarding the manner in which CIA's exemption authority should be exercised.

4. If you were to fully exercise the exemption available to CIA under the Act, the most important results would be:

a. The denial of access by individuals to Agency records pertaining to them.

b. The prevention of judicial review of Agency determinations under the Act.

In the opinion of the General Counsel, these results would occur despite the fact that the FOIA also allows access to Agency records. The Department of Justice has opined that once the Privacy Act goes into effect on 27 September 1975, it will be the "exclusive remedy for an individual who seeks records about himself contained in a system of records covered by the Privacy Act."\*

5. Even though the Act provides the legal option of denying an individual access to Agency records pertaining to him, and of preventing judicial review in these cases, you have previously expressed an intent to

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\*While OGC has long held this view, it was only recently confirmed by the Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, in an opinion dated 30 July 1975 to the Chief Counsel, Internal Revenue Service. The DOJ opinion failed to mention, perhaps intentionally, one of its strongest supporting arguments, to wit: The exemption available for CIA and law enforcement records under subsection (j) of the Act would be a nullity, once exercised, if an individual could secure records about himself which were not available under the Privacy Act by merely asserting that his request was under the Freedom of Information Act.

comply with requests for individual access to records. In your testimony before the Government Information and Individual Rights Subcommittee of the House of Representatives on 5 March 1975, you stated:

...On inquiries by individuals with respect to their own names, I propose to make available to the requester such material as does not reveal intelligence sources and methods or which does not fall within the responsibility of agencies other than CIA....

However, in response to Chairwoman Abzug's question of why the more limited exemption of subsection (k) would not be sufficient, you stated:

...Because, Madam Chairwoman, if the judge agrees that all of our activities which we would say constitute intelligence sources and methods, that they are included within those two descriptions, then it would be all right. However, we cannot be sure of that, and we are fearful that a number of the quite legitimate activities in which we are engaged would not be protected by that provision....

Thus, it would seem, in directing the Agency's compliance with the Privacy Act, you should exercise CIA's exemption only to the extent necessary to protect the Agency's interests as indicated in the above-quoted testimony.

6. Pursuant to the above guidance, a review has been conducted of all provisions of the Act and of the Agency records systems subject thereto for the purpose of determining precisely how the Agency's exemption should be exercised. Based upon that review, it is recommended in part that:

a. Polygraph records be exempted from all provisions of the Act except 3(e)(1) and (5). (These two provisions require that only records necessary to accomplish a statutory purpose be maintained, and that all records used to make determinations about an individual be maintained in an accurate, complete, and timely manner.)

JUSTIFICATION FOR EXEMPTION: To prevent access, accountability, and judicial review of records which intimately reveal the workings and permit the frustration of an Agency security method.

b. That all CIA records systems subject to the Act be exempted from the following provisions of Section 3:

(1) PROVISION (c)(3) requires that an individual receive upon request an accounting of disclosures made to other organizations.

JUSTIFICATION FOR EXEMPTION: To avoid disclosures that may adversely affect ongoing operational relationships with other intelligence and related organizations, and thus reveal or jeopardize intelligence sources and methods.

(2) PROVISIONS (e)(3)(A)-(D) would require the Agency to inform each individual whom it asks to supply information, on a form that can be retained, the purpose for requesting the information, the routine uses which would be made of the information, the authority for such requests, and the effects on the individual, if any, of not providing all or part of the requested information.

JUSTIFICATION FOR EXEMPTION: These provisions would create an unnecessary risk of exposure of intelligence sources and methods in the processing of covert employment applications.

7. In addition, it is recommended that you exercise the Agency's exemption under subsection (j) of the Act to prevent access to those portions of Agency systems of records which contain intelligence sources and methods, to prevent judicial review of any Agency determination to withhold personal records or information because intelligence sources and methods are involved, and to enable the Agency to make an appropriate response to an individual who requests to be notified if CIA has records pertaining to him in those cases where the Agency does not wish to confirm the existence of such records. It is recommended that this be accomplished by your exercise of authority to:

a. Exempt from access under subsection (d) of the Act those portions of each and all CIA systems of records that consist of, pertain to or would otherwise reveal intelligence sources and methods.

b. Exempt from access under subsection (d) of the Act those portions of each and all CIA systems of records that consist of documents or information provided by foreign, Federal, state or other public agencies or authorities.

c. Exempt from any obligation to provide notification under subsections (e)(4)(G) and (f)(1) to individuals who inquire if CIA has records on them, or who ask for records, for those portions of each and all systems of records which have been exempted from individual access under subsection (j), by providing that in such cases the CIA may choose to neither confirm nor deny the existence of any records, but may advise the individual only that there is no record which is available to him pursuant to the Privacy Act of 1974. (This exemption is necessary to cover those rare cases where CIA would not want to admit the existence of a record.)

d. Exempt from judicial review under subsection (g) of the Act all Agency determinations made under subsection (j) concerning notification under subsections (e)(4)(G) and (f)(1) and denial of access under subsection (d) when it has been determined by an appropriate Agency official that such notification or access would disclose information consisting of, pertaining to or otherwise revealing intelligence sources and methods.

e. Exempt from judicial review under subsection (g) of the Act all Agency determinations to deny access under subsection (d) when it has been determined by an appropriate Agency official that such access would disclose information provided to CIA by foreign, Federal, state or other public agencies or authorities.

8. The approach outlined above would subject the Agency to all provisions of the Privacy Act, including judicial review, except in those cases that involve intelligence sources and methods or information provided by the named agencies or authorities. Obviously, there are other interests which deserve protection, and for which exemption can be exercised under either subsection (j), the Agency's broad exemption, or subsection (k), the exemption which all agencies may use to the extent it is applicable. Because you have previously indicated the manner in which the Agency will

comply with the Act, and because subsection (k) is the primary and in many cases the sole exemption on which other agencies may rely, it is recommended that you exercise exemption authority under (k) for the remaining interests which deserve protection but which are not unique to CIA. In this manner, certain portions of CIA records systems (e.g., classified information) will be subject to the provisions of the Act (e.g., judicial review) to the same extent as the systems of all other agencies. Therefore, it is recommended that you exempt under subsection (k) the following portions of all CIA systems of records from subsection (d), the access provision of the Act:

a. Those portions of all systems of records that consist of, pertain to or would otherwise reveal information classified under Executive Order 11652 and which is subject to the provisions of Section 552(b)(1) of Title 5 U.S.C.

b. Those portions of all systems of records that consist of, pertain to or would otherwise reveal records required by statute to be maintained and used solely as statistical records.

c. Those portions of all systems of records that consist of, pertain to or would otherwise reveal investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. (However, this exemption would only be operative to the extent that disclosure of such material would reveal the identity of a source who furnished information under an express promise that the identity of the source would be held in confidence, or, prior to 27 September 1975, under an implied promise of confidentiality.)

d. Those portions of all systems of records that consist of, pertain to or would otherwise reveal testing or examination material used solely to determine individual qualifications for appointment or promotion in Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

Approved For Release 2007/02/01 : CIA-RDP84-00780R006700040032-2

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9. In accordance with the discussion outlined above, it is recommended that:

a. the Agency systems of records subject to the Act (listed in the Attachment) and the routine uses for the records and information contained in these systems be published in the Federal Register for public comment;


b. as head of the Central Intelligence Agency, you exercise the Agency's exemptions as authorized in subsections (j) and (k) of the Act as outlined in paragraphs 6, 7, and 8, and that this intention be published in the Federal Register for public comment;

c. Agency rules (attached) be promulgated to implement over all compliance with the Act, and that these rules be published in the Federal Register for public comment;

d. internal Agency regulations be promulgated to conform records management practices with the provisions of the Act; and that,

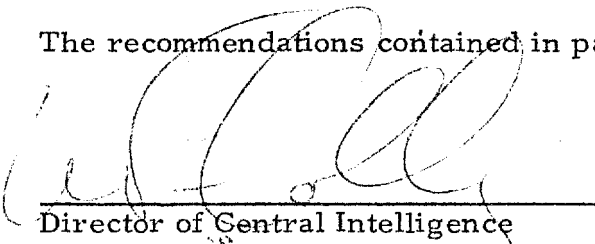
e. you delegate to the Deputy Director for Administration the authority to make further decisions regarding implementation of the Privacy Act based on public comments to proposed Agency rules, exemptions, and notice of systems of records, or as otherwise may be required to implement the Act.

STATINTL

  
JOHN F. BLAKE  
Deputy Director for Administration

Attachment

The recommendations contained in paragraph 9 are approved.

  
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Director of Central Intelligence

18 AUG 1975  
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Date